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December 6, 2004

VIA OVERNIGHT MAIL

Walter Thomas, Secretary
Alabama Public Service Commission
100 N. Union Street – 8th Floor
RSA Union Building
Montgomery, AL 36104

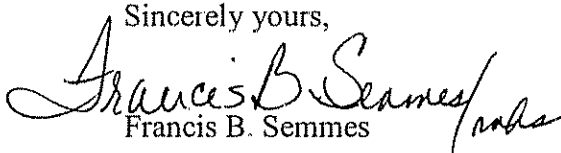
**Re: Proposed Revisions to Price Regulation and Local Competition Plan
Docket No. 28590**

Dear Mr. Thomas:

Enclosed are the original and ten (10) copies of BellSouth Telecommunications, Inc.'s Reply Comments in Response to the Staff's Recommended Revisions to the Alabama Telecommunications Regulation Plan. Please file and distribute as needed and return a stamped copy of this cover letter to me in the envelope provided.

Thank you for your assistance in this matter.

Sincerely yours,


Francis B. Semmes

FBS/mhs
Enclosures

cc: Honorable John Garner, ALJ (via overnight mail)
Mr. Larry Smith, Acting Director (via overnight mail)
Ms. Judy McLean, Director (via overnight mail)
Honorable James E. Wilson Esq. (via overnight mail)
Honorable Mark Montiel, Esq. (via overnight mail)
Honorable Terry Butts, Esq. (via overnight mail)
Parties of Record (via U S Mail)

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

In Re:)	
Proposed Revisions to the)	Docket No. 28590
Price Regulation and Local)	
Competition Plan)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S REPLY COMMENTS
IN RESPONSE TO THE STAFF'S RECOMMENDED REVISIONS TO
THE ALABAMA TELECOMMUNICATIONS REGULATION PLAN**

BellSouth Telecommunications, Inc. ("BellSouth"), through its undersigned counsel, files its Reply Comments to the Staff's recommended revisions to the Alabama Telecommunications Regulation Plan ("ATRP" or "the Plan"), as requested by the Alabama Public Service Commission's ("Commission's") Order dated November 5, 2004.

A. Introduction.

Since the time BellSouth filed its Petition for Adoption of the Metro Pricing Flexibility Plan more than eighteen months ago, this Commission has accepted multiple rounds of comments, conducted workshops, and facilitated industry-wide discussions in an effort to move toward a more streamlined and market driven process to govern telecommunications in this state. In comments filed November 22 and 23, many carriers suggest delays in adopting the Plan or propose complicated revisions.¹ Neither delay nor the unnecessary revisions requested are warranted. The Commission should reject such suggestions and take action *now* to move Alabama forward. In these Reply Comments, BellSouth will briefly highlight aspects of the recent comments that should be rejected, as well as those suggestions that the Commission may wish to consider including in the Plan. To the extent that commenters' November 2004 remarks

¹ Certain parties also included classic rhetoric about BellSouth in their comments. There is no legitimate basis for this Commission to take seriously misplaced claims that BellSouth is either a monopoly or that it provides services in a discriminatory or anticompetitive manner. These allegations are utterly devoid of any factual support and should be ignored.

repeat positions that have been fully addressed in prior comment cycles, BellSouth will not burden the record by restating previous arguments; instead, BellSouth incorporates by reference its comments of January 6 and 27, 2004. Consequently, with respect to certain comments made by AT&T Communications of the South Central States, LLC ("AT&T") as well as by the non-BellSouth incumbent local exchange carriers ("ILECs"), BellSouth respectfully directs the Commission to its previously filed comments concerning local calling plans, access rates, and intercarrier compensation. With respect to various comments concerning proposed modifications to Part IV of the Plan, the competitive telecommunications marketplace does not justify continued asymmetric regulation notwithstanding competitive local exchange carrier ("CLEC") protestations to the contrary. Instead, the Commission should focus on streamlining regulation and allowing market forces to govern. Beyond this objection to misplaced pleas for asymmetric regulation, BellSouth has no further comment concerning proposed revisions to Part IV of the Plan.

B. This Commission Should Promptly Adopt the Plan with BellSouth's Proposed Revisions.

Both AT&T and ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") inappropriately suggest this Commission should delay approval of the Plan. The Commission should disregard such suggestions and should instead consider the Attorney General's request to "approve the ATRP at the next Commission meeting." While AT&T and ITC^DeltaCom recommend a delay pending anticipated action from the Federal Communications Commission ("FCC"), neither carrier provides any valid support for such suggestions. Instead, each party's comments are devoid of examples of actual language in the Plan designed to govern retail telecommunications services that would be impacted by an FCC vote addressing unbundled network elements ("UNEs").

AT&T, for example, suggests that without access to UNE-P, competition in Alabama will suffer. AT&T's advocacy cannot withstand scrutiny in light of the first sentence of its recently filed FCC comments: "[i]n this remand proceeding, AT&T no longer seeks permanent rules that require the unbundling of mass-market switching and the maintenance of UNE-P."² To suggest the absence of UNE-P requires a delay in adopting necessary modifications to facilitate retail competition in Alabama when AT&T *does not even claim impairment without access to UNE-P* demonstrates the fallacy behind AT&T's advocacy.

Likewise, ITC^DeltaCom claims that "it would be premature" to more appropriately align the retail regulatory framework for all Alabama carriers pending the issuance of FCC rules, yet in the same comments suggests this Commission should adopt "plan provisions that will not be impacted by FCC orders issued in the near future." The reality is that any FCC action addressing UNEs will not have a specific and direct impact on the provisions of Staff's Plan, which is geared toward a more flexible environment for the retail marketplace. For those specific topics that the FCC is likely to address -- such as access charges, intercarrier compensation, and universal service -- federal guidance before embarking on significant modifications at the state level makes sense.³ It does not make sense to delay acting on the current Plan, which does not contain provisions that will be directly impacted by anticipated FCC action and the Commission should move forward rather than backwards.

This Commission's previously articulated objectives -- notably, to "develop a plan which is dynamic and capable of responding to changes in legislation, new ideas, and evolving market

² October 4, 2004 Comments of AT&T Corp., *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338.

³ For example, on December 2, 2004, *Communications Daily* reported that the FCC may seek comments on all industry intercarrier compensation proposals by releasing a further notice of proposed rulemaking by year-end.

conditions” -- are instructive. Any delay – particularly in light of the time that has already elapsed since the date BellSouth’s petition was filed – would undermine the need to espouse a dynamic plan and evolving plan. While AT&T and ITC^DeltaCom may prefer to endorse only the changes that improve their respective business plans while ignoring or delaying other revisions, this Commission has no such luxury and must respond to the significant changes in the industry so that Alabama consumers receive the benefits of competitive markets.

Similarly, this Commission need not delay the adoption of the Plan until after a hearing takes place – ITC^DeltaCom has not even attempted to detail precisely what it intends to prove or why it believes a hearing is necessary. ITC^DeltaCom’s silence speaks volumes, given that it is a member company of CompSouth, an entity that previously sought hearings only “if necessary, after comments and workshops.”⁴ ITC^DeltaCom has failed to articulate any need for a hearing, and instead invokes vague and unarticulated “due process” concerns. Any such due process concerns have been fully met in light of this Commission’s comment cycles, workshops, and industry conference calls. Further proceedings are neither necessary nor warranted and the Commission should decline ITC^DeltaCom’s poorly disguised attempt to delay adoption of the Plan.

C. The Commission Should Reject Unnecessary Plan Revisions.

Many commenters suggest the Commission should extend itself far beyond the revisions necessary to reshape a more realistic and responsive regulatory framework in Alabama. The Commission should decline to adopt such proposals, which are addressed more fully below.

i. The Plan Provides Ample Protection for Winback and Retention Marketing.

ITC^DeltaCom claims that the Plan should be revised to adopt an industry code of conduct to address winback and retention activities. The Plan includes a code of conduct, which

⁴ See CompSouth’s June 25, 2004 Joint Motion for Clarification of Notice of Staff Proposal, p. 2.

closely mirrors the Code of Conduct for Winback Activities adopted by the Georgia Public Service Commission in Docket No. 14232-U. The code of conduct is included as Attachment C to the Plan. Since ITC^DeltaCom does not propose specific language or provide any suggested modifications to the proposed code of conduct, it is logical to conclude Attachment C fully addresses any concerns that ITC^DeltaCom may have.

ii. The Plan Should Not Include ITC^DeltaCom's Suggested Wholesale Requirements.

ITC^DeltaCom also erroneously contends that the Commission must add a host of wholesale requirements to the Plan. This contention is flatly contradicted by ITC^DeltaCom's assertion that the Commission "defer adoption" of aspects of the Plan that "are likely to be impacted by the new FCC UNE rules." In the FCC's recent *Interim Order*,⁵ it addressed access to UNEs on a transitional basis, sought comment on a host of issues, including how to establish sustainable new unbundling rules, various ILEC service offerings, and section 271 obligations. Given the FCC's interest in these issues, it defies logic to suggest that rules and regulations concerning UNEs should be included in the Plan, particularly given ITC^DeltaCom's failure to provide any suggested language or specific provisions to address this portion of its comments. The Commission should disregard ITC^DeltaCom's comments concerning the BellSouth Plan and should refrain from adding unnecessary wholesale language.

D. The Commission Could Include Reasonable Revisions to the Plan.

BellSouth has carefully reviewed the comments of the Attorney General. While the Plan as revised by BellSouth's November 23, 2004 Comments is a step in the right direction, there are additional revisions that the Commission may elect to adopt. For instance, the Attorney General

⁵ *Unbundled Access To Network Elements; Review Of The Section 251 Unbundling Obligations Of Incumbent Local Exchange Carriers*, WC Docket No. 04-313 & CC Docket No. 01-338, *Order and Notice of Proposed Rulemaking*, FCC 04-179 (rel. Aug. 20, 2004) ("*Interim Order*").

suggests certain modifications to pricing rules. BellSouth has no objection to the following revision to Section 7.B.(2), Non-Discretionary Retail Services, (shown below in redline):

(2) NON-DISCRETIONARY RETAIL SERVICES

Prices for Non-discretionary Retail Telecommunication Services, annotated on Attachment B, shall not be increased at the discretion of BellSouth. The Company may request increases for prices of these services, on a case-by-case basis, in accordance with the filing requirements identified in part 6D of this Plan. ~~In evaluating such requested price increases, the Commission will take into account prices for the same or equivalent services in other states within BellSouth's operating area.~~

Likewise, BellSouth has no objection to revising Section 7.B.(3), Vertical Services, as follows:

(3) VERTICAL SERVICES

Upon approval of this Plan for BellSouth, the price for Residential Call Waiting, Caller I.D. and Caller I.D. Deluxe may be increased~~adjusted to mirror existing prices in any one of the states within BellSouth's operating area.~~ Thereafter, prices for Residential Call Waiting, Caller I.D. and Caller I.D. Deluxe will be capped for two years. Pricing Rules for Other Retail Telecommunication Services, Part 7B(4), shall apply for all other Business and Residential Vertical Services. Beginning with the second anniversary of the Plan, the pricing rules in 7B(4) shall thereafter apply to Residential Call Waiting, Caller I.D. and Caller I.D. Deluxe.

The Attorney General also suggested a reasonable modification to Section 11.B, which BellSouth is amenable to including along with its previously suggested revision. Both the Attorney General's proposal and BellSouth's suggested revision are shown below in redline, and both modifications are reasonable:

B. Any affected customer may, within thirty (30) days from the time of the Effective Date of any price increase appearing on the customer's bill, elect to cancel his/her subscription to a service that has been increased and BellSouth will credit the customer's bill by the amount of the price increase if the increase has been reflected on the customer's bill prior to the cancellation of the service.⁶

⁶ This provision shall not apply to customers who subscribe to BellSouth's service pursuant to a contract arrangement.

The Attorney General likewise suggests that notice and a hearing should be required whenever one of three revenue replacement mechanisms occurs as set forth in Section 7.C.(2). BellSouth has no objection to the Commission modifying the Plan to include notice and a hearing prior to the implementation of any of the three options contained in this portion of the Plan. Similarly, the Attorney General requests a mandatory, rather than a discretionary, review of the Plan on the third anniversary. In BellSouth's view, the Plan would be acceptable with either a discretionary or mandatory review. Finally, in Section 3, note 3 of the Plan, if the Commission desires to expand the "upon demonstration" language to make clear that BellSouth must make a filing and the Commission must enter an order approving a request to reassign non-MSA wire centers to Tier II, BellSouth would not object.


With respect to the remaining suggestions of the Attorney General, BellSouth is hopeful that this Reply may serve to alleviate any outstanding concerns of Alabama consumers. For example, the Attorney General expresses concerns about the possibility for rate increases. The Plan, however, allows interested parties to challenge tariffs that increase rates with the potential for refunds. Likewise, the Plan allows customers to cancel services and obtain refunds in the event of a price increase. Given these consumer protections and in light of the competitive market that will impact any price increases, BellSouth believes that any remaining concerns the Attorney General expresses are fully addressed.

E. Conclusion.

BellSouth reiterates its appreciation to the Staff and the industry for devoting resources to this effort. Only by recognizing and taking proactive steps to address the rapid acceleration and transformation that has occurred and that continues to evolve in the telecommunications industry can this state and the industry move forward. The modifications suggested by BellSouth meet

the spirit and intent first espoused in the 1995 Order and BellSouth respectfully requests that the Commission promptly adopt the Staff recommendations with BellSouth's recommended modifications and decline to postpone approval of, or impose unnecessary changes to, the Staff's Plan.

Respectfully submitted this 7th day of December, 2004.


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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Reply Comments of BellSouth Telecommunications, Inc. on all parties of record by placing a copy of same in the United States Mail, postage prepaid, on this the 7th day of **December, 2004**.

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